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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHEMETALL US, INC., **Plaintiff,** **-against-** **DONALD LAFLAMME and CORAL CHEMICAL COMPANY,** **Defendants.**	**Civil Action:** **COMPLAINT**

Plaintiff, Chemetall US, Inc., ("Plaintiff" or "Chemetall"), by and through its undersigned attorneys, Kelley, Drye & Warren, LLP, state for their Verified Complaint as follows:

NATURE OF THE ACTION

1. Plaintiff Chemetall US, Inc., brings this action against Defendants Donald LaFlamme ("LaFlamme") and Coral Chemical Company ("Coral") for a permanent injunction and damages for breach of contract, tortious

interference with contract, and misappropriation of trade secrets, all caused by, *inter alia*, Defendant LaFlamme's (i) theft of Chemetall's confidential and proprietary business information, (ii) breach of his covenant not to compete with Chemetall in the same geographic territory for which he was responsible while employed at Chemetall during the one-year period following his termination, (iii) breach of his covenant not to solicit customers or prospective customers of Chemetall during the one-year period following his termination, (iv) breach of his covenant not to solicit employees of Chemetall during the one-year period following his termination, and (v) breach of his promise not to disclose Chemetall's confidential information to third parties.

2. LaFlamme is bound by an Agreement in Consideration of Employment (the "Agreement") with Chemetall which expressly prohibits LaFlamme, for a period of one year following the termination of his employment from, *inter alia*: (i) commencing employment with a competitor of Chemetall within any geographic territory to which LaFlamme was assigned by Chemetall during the two years prior to his termination, (ii) soliciting, either directly or indirectly, any customers who have either purchased a Chemetall product within the two year period preceding his termination, or who were contacted by Chemetall within the two years preceding his termination; and (iii) improperly soliciting, directly and indirectly, employees of Chemetall. The Agreement further restricts

LaFlamme from disclosing any confidential information, as defined by the Agreement, to any third party, and from taking any Chemetall property with him upon his termination from Chemetall.

3. LaFlamme voluntarily terminated his employment with Chemetall on January 29, 2016, and immediately thereafter, upon information and belief, in breach of the Agreement, began working for Chemetall's direct competitor, Coral, selling the same products to the same customers in the same geographic region.

4. Coral is fully aware of LaFlamme's breach of the Agreement, yet continues to allow him to continue his employment with Coral.

5. Upon information and belief, in violation of his Agreement and common law, LaFlamme also removed critical documents from his business computer just prior to his resignation, without authorization from Chemetall, so that he can use the information in these files to assist him in his employment at Coral.

6. An injunction against any further prohibited activities is necessary to prevent further harm to Plaintiff caused by Defendants' unfair and illegal activity which, if it continues unabated, will result in Chemetall losing customers and goodwill to which LaFlamme had access by virtue of his employment with Chemetall.

7. Indeed, the Agreement specifically provides that:

> Employee acknowledges that he shall also have access to and/or receive CONFIDENTIAL INFORMATION concerning Chemetall's most valuable and long-standing customers, including but not limited to, customer lists; pricing information; technical product line information; competitive product comparisons; customer marketing data and purchasing patterns; and applicable discount codes. . . . Employee fully understands that he is prohibited from disclosing the foregoing information; that such disclosures will irreparably harm Chemetall; and that money damages are an incomplete or unsatisfactory remedy for such harm.

THE PARTIES

8. Plaintiff Chemetall is a Delaware corporation with its principal place of business located at 675 Central Ave, New Providence, New Jersey.

9. Upon information and belief, Defendant LaFlamme is a resident of Indiana, with an address at 2003 Forest Valley Court, Lanesville, Indiana 47136.

10. Upon information and belief, defendant Coral Chemical Company is a privately owned corporation with its principal place of business located at 1915 Industrial Avenue, Zion, Illinois 60099, and is registered to do business and does business in New Jersey.

11. Pursuant to Section 13 of the Agreement, the Agreement is to be "constructed and governed by the laws of the State of New Jersey."

12. Section 13 further provides that New Jersey shall be the exclusive jurisdiction for any disputes relating to the Agreement, stating:

> Employee consents and agrees that any and all litigation between him and Chemetall relating to this Agreement shall take place in the State of New Jersey and Employee expressly consents to the jurisdiction of the federal and/or state courts in New Jersey.

13. This Court has subject matter jurisdiction over this action based on diversity of citizenship pursuant to 28 U.S.C. § 1332. The amount in controversy, exclusive of interest and costs, is in excess of $75,000.

14. Venue and personal jurisdiction is proper in this district under 28 U.S.C. §1391(a), (b), and (c) because LaFlamme agreed to submit to the jurisdiction of this state and Coral conducts business in this jurisdiction.

THE FACTS

15. Chemetall's business includes, among other things, selling chemical processes related to the surface treatment of metal and plastics, which it markets and sells through a network of sales managers.

16. Chemetall's sales force includes Technical Sales Managers ("TSMs"), whose duties and responsibilities include servicing existing accounts and soliciting new accounts within his or her territory.

17. LaFlamme accepted an offer of employment from Chemetall to work as a TSM, and executed the Agreement upon commencement of his employment on or about May 18, 2010.

18. As consideration for LaFlamme's agreement, LaFlamme became eligible for employment as a TSM at Chemetall.

19. Section 7 of the Agreement contains a restrictive covenant governing post-employment competition as follows:

> Competition. . . Employee agrees that, for the period of one (1) year following the termination of Employee's employment (regardless of whether Employee's termination is voluntary or involuntary, or with or without cause): (a) Employee will not directly or indirectly, whether as sole proprietor, partner, venturer, stockholder, director, officer, employee or agent, engage or participate in any employment or activity intended to or which does compete with Chemetall within any territory to which Employee was assigned by Chemetall during the two (2) years prior to the termination of Employee's employment with Chemetall . . . .

20. Further, Section 8, Paragraph 1 of the Agreement contains a restrictive covenant governing post-employment solicitation of Chemetall customers as follows:

> Solicitation . . . Employee shall not during the course of his/her employment with Chemetall and/or for one (1) year following the termination of Employee's employment with Chemetall (regardless of whether Employee's termination is voluntary or involuntary, or with or without cause) directly or indirectly, whether as sole proprietor, partner, venturer, stockholder, director, officer, employee or agent, solicit, attempt to solicit, assist another to solicit customers of Chemetall, or in any other way, attempt to influence customers of Chemetall to alter or terminate their business relationships with Chemetall.

21. In addition, Section 8, Paragraph 2 of the Agreement restricts LaFlamme from soliciting Chemetall employees as follows:

> Employee shall not, during the course of his/her employment with Chemetall and for one (1) year following the termination of Employee's employment (regardless of whether Employee's termination is voluntary or involuntary, or with or without cause), induce or influence, or attempt to induce or influence, any person engaged as an Employee, independent contractor or agent of Chemetall to terminate his/her relationship with Chemetall; [or to] canvas, solicit, accept the employment of or otherwise engage or use the services of any person engaged as an employee, independent contractor, or agent of Chemetall . . . .

22. LaFlamme also acknowledged that, through his position with Chemetall, he had access to Chemetall's confidential and trade secret information

that was not generally known in the trade or industry. Paragraph 1 on page 2 of the Agreement reads, in relevant part:

> Employee acknowledges that he/she shall also have access to and/or receive CONFIDENTIAL INFORMATION concerning Chemetall['s] most valuable and long-standing customers, including but not limited to, customer lists; pricing information; technical product line information; competitive product comparison; customer marketing data and purchasing patterns; and applicable discount codes.

23. In addition, the Agreement requires that LaFlamme not disclose any Confidential Information (as defined by the Agreement) to any third party. Section 5 of the Agreement states:

> Employee acknowledges and agrees that he/she shall not, without Chemetall written permission, at any time during or after termination of Employee's employment by Chemetall, disclose to any other person or organization, use for his or her own benefit, or enable anyone else to disclose or use, Chemetall CONFIDENTIAL INFORMATION, as defined above, or any other confidential information or trade secrets of Chemetall or of Chemetall parent, subsidiary or affiliated companies.

24. Confidential Information includes information concerning Chemetall's "most valuable and long-standing customers, including but not limited to, customers lists; pricing information; technical product line information; competitive product comparisons; customer marketing data and purchasing patterns; and applicable discount codes."

25. Moreover, pursuant to Section 6 of the Agreement, LaFlamme is obliged to return all Chemetall property upon termination of employment:

> Employee agrees that all documents pertaining to Chemetall or any of its affiliates['] CONFIDENTIAL INFORMATION or otherwise pertaining to Chemetall business, which may be prepared or received by Employee during his or her employment, including notebooks, work records, manuals, price lists, customer lists, blueprints, etc., are and shall remain the Property of Chemetall. Employee shall not make or return any copy or notes of, or remove from Chemetall premises any such documents without prior written consent of Chemetall or unless necessary for the proper, ordinary and efficient discharge of Employee's duties. . . . Upon termination of Employee's employment; or at any other time upon request by Chemetall, Employee shall immediately return to Chemetall all such documents, notes or copies. The promise is binding on Employee regardless of the reason for termination of his employment.

26. LaFlamme terminated his employment with Chemetall on January 29, 2016, and, upon information and belief, immediately began working for Chemetall's direct competitor, Coral.

27. This is a direct violation of LaFlamme's contractual obligation not to engage in employment with a direct competitor of Chemetall within the one-year period following his termination in the same geographic territory for which he was employed in the two year period immediately preceding his termination.

28. Upon information and belief, in the two weeks prior to terminating his employment with Chemetall and after submitting his resignation,

LaFlamme copied confidential and proprietary information from his Chemetall laptop to removable storage devices without authorization from Chemetall, and in breach of his obligation under the Agreement not to remove any Chemetall property without prior written consent, and to return all Chemetall property upon termination of employment.

29. Upon information and belief, LaFlamme has used and intends to continue to use the information he took from his Chemetall computer without authorization to benefit Coral, in direct violation of the express terms of the Agreement.

30. Upon information and belief, LaFlamme has also disclosed and intends to continue to disclose the confidential and proprietary information of Chemetall to solicit customers for Coral, violating the plain terms of his Agreement with Chemetall.

31. On February 3, 2016, Chemetall sent a letter reminding LaFlamme of his obligations to Chemetall following the termination of his employment, including the covenant not to engage in employment with a competitor of Chemetall within the one-year period following his termination within the same geographic territory to which he was assigned at Chemetall, not to solicit customers or prospective customers of Chemetall for a period of one year

following the termination of his employment, and not to disclose Chemetall's confidential and proprietary information to any third parties.

32. LaFlamme did not respond to the February 3, 2016 letter.

33. On February 6, 2016, Chemetall, through its legal counsel, sent letters to LaFlamme and to Coral's General Counsel, enclosing copies of the Agreement, and outlining LaFlamme's legal, binding, and enforceable obligations under the Agreement, including the obligation not to compete against, or to solicit the customers of Chemetall for a period of one (1) year following his termination, as well as his obligations not to disclose the confidential and proprietary information of Chemetall.

34. The February 6 letters further demanded that Laflamme and Coral's General Counsel respond by the close of business on February 10th to advise what steps both parties were taking to remedy the situation, and informed them that Chemetall was prepared to take legal action against LaFlamme and Coral if LaFlamme's breach of his obligations under the Agreement continued.

35. In response, on or about February 11, 2016, in violation of the Agreement's exclusive jurisdiction clause, LaFlamme instituted an action in the State of Indiana seeking a declaration that his restrictive covenant is invalid.

36. Upon information and belief, LaFlamme is currently employed by Coral, a direct competitor of Chemetall, as a sales representative, selling and soliciting Chemetall customers and prospective customers.

37. Furthermore, upon information and belief, LaFlamme is using the confidential and proprietary information he took from Chemetall through improper means to solicit customers on behalf of Coral.

38. If LaFlamme is allowed to continue to violate his non-compete and non-solicitation obligations as well as his confidentiality obligations, Chemetall will suffer immeasurable damages and irreparable harm, including but not limited to the loss of business, goodwill, and reputation.

COUNT I

BREACH OF CONTRACT

39. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-38 as if fully set forth herein.

40. LaFlamme executed the Agreement, under which he agreed that, for one year following the termination of his employment with Chemetall:

> (regardless of whether Employee's termination is voluntary or involuntary, or with or without cause): (a) Employee will not directly or indirectly, whether as sole proprietor, partner, venturer, stockholder, director, officer, employee or agent, engage or participate in any employment or activity intended to or which does compete with Chemetall within any territory to which Employee was assigned by Chemetall during the two (2)

> years prior to the termination of Employee's employment with Chemetall . . . .

41. LaFlamme further agreed that, for one year following the termination of his employment with Chemetall, LaFlamme would not:

> (regardless of whether Employee's termination is voluntary or involuntary, or with or without cause) directly or indirectly, whether as sole proprietor, partner, venturer, stockholder, director, officer, employee or agent, solicit, attempt to solicit, assist another to solicit customers of Chemetall, or in any other way, attempt to influence customers of Chemetall to alter or terminate their business relationships with Chemetall.

42. LaFlamme also acknowledged that, through his position with Chemetall, he had access to the Company's Confidential Information, as defined by the Agreement. Paragraph 1 on page 2 of the Agreement reads, in relevant part:

> Employee acknowledges that he/she shall also have access to and/or receive CONFIDENTIAL INFORMATION concerning Chemetall['s] most valuable and long-standing customers, including but not limited to, customer lists; pricing information; technical product line information; competitive product comparison; customer marketing data and purchasing patterns; and applicable discount codes.

43. In addition, LaFlamme agreed not disclose any Confidential Information (as defined by the Agreement) to any third party. Section 5 of the Agreement states:

> Employee acknowledges and agrees that he/she shall not, without Chemetall written permission, at any time during or after termination of Employee's employment by Chemetall, disclose to any other person or organization, use for his or her own benefit, or enable anyone else to disclose or use, Chemetall CONFIDENTIAL INFORMATION, as defined above, or any other confidential information or trade secrets of Chemetall or of Chemetall parent, subsidiary or affiliated companies.

44. Pursuant to Section 6 of the Agreement, LaFlamme is obliged to return all Chemetall property upon termination of employment:

> Employee agrees that all documents pertaining to Chemetall or any of its affiliates['] CONFIDENTIAL INFORMATION or otherwise pertaining to Chemetall business, which may be prepared or received by Employee during his or her employment, including notebooks, work records, manuals, price lists, customer lists, blueprints, etc., are and shall remain the Property of Chemetall. Employee shall not make or return any copy or notes of, or remove from Chemetall premises any such documents without prior written consent of Chemetall or unless necessary for the proper, ordinary and efficient discharge of Employee's duties. . . . Upon termination of Employee's employment; or at any other time upon request by Chemetall, Employee shall immediately return to Chemetall all such documents, notes or copies. The promise is binding on Employee regardless of the reason for termination of his employment.

45. The promises made by LaFlamme were material terms to the Agreement, which was executed by LaFlamme in exchange for employment as a TSM with Chemetall in May 2010.

46. The Agreement is valid and enforceable.

47. LaFlamme breached the Agreement by, among other things, working for Chemetall's direct competitor, Coral, selling the same products to the same customers in the same geographic region within the one-year period following his termination from Chemetall.

48. Upon information and belief, LaFlamme also removed critical documents from his business computer just prior to his resignation, without authorization from Chemetall, in breach of his obligation under the Agreement not to remove any Chemetall property without prior written consent, and to return all Chemetall property upon termination of employment.

49. Such breaches have resulted in damages to Plaintiff in an amount to be proved at trial, but which, upon information and belief, exceed $75,000.

50. As a further result of this breach, Plaintiff has suffered and continues to suffer damages and irreparable harm, including, but not limited to, the loss of business, loss of goodwill, and other damages for which there is no adequate remedy at law.

COUNT II

TORTIOUS INTERFERENCE WITH CONTRACT

51. Plaintiff repeats and realleges the allegations in Paragraphs 1 through 50 as if fully set forth herein.

52. LaFlamme had a valid contract with Chemetall which prohibited him from, among other things, engaging in employment with a competitor of Chemetall, for a period of one year after leaving Chemetall within the same geographic territory to which he was assigned at Chemetall, and further prohibited him from disclosing Chemetall's confidential information to third parties.

53. Coral was aware of the Agreement and obligations but nevertheless recruited and employs LaFlamme, intentionally inducing him not to comply with the Agreement, without any justification.

54. As a result of Coral's conduct, Plaintiff has suffered and continues to suffer damages and irreparable harm, including but not limited to, the loss of business, loss of goodwill, and other damages for which there is no adequate remedy at law.

55. Defendant Coral's actions constitute tortious interference with contract.

56. Defendant's breach has resulted in damages to Plaintiff in an amount to be proven at trial, but which, upon information and belief, exceeds $75,000.

COUNT III

MISAPPROPRIATION OF TRADE SECRETS

57. Plaintiff repeats and realleges the allegations in paragraphs 1-56 as if fully set forth herein.

58. LaFlamme acknowledged that by virtue of his employment with Chemetall, he had access to confidential and trade secret information not generally known in the trade or industry, or readily ascertainable to competitors, including but not limited to information concerning Chemetall's products, research projects, patterns, devices, customer lists, and compilations of information, including inventions, discoveries, proprietary information and improvements made or developed by employees of Chemetall, Chemetall product formulae, process and method specifications, and other "know-how" information relating to Chemetall's business.

59. Chemetall expends significant amounts of time and resources developing its trade secret information and takes reasonable measures to keep such information secret, including obtaining patents to protect such information from disclosure to its competitors and to the public.

60. This information confers an economic advantage to Chemetall over its competitors, and such information would be extremely valuable to a competitor of Chemetall, like Coral.

61. Upon information and belief, LaFlamme acquired Chemetall's trade secret information through improper means by copying data from his Chemetall laptop onto removable storage devices without authorization from Chemetall, and in direct breach of his Agreement with Chemetall to return all documents to Chemetall upon termination of employment.

62. LaFlamme had a duty to maintain the secrecy of Chemetall's trade secrets by virtue of his Agreement with Chemetall, which both LaFlamme and Coral were aware.

63. Upon information and belief, LaFlamme and Coral are using and intend to continue to use Chemetall's unlawfully obtained trade secret information in their efforts to solicit customers and prospects on behalf of Coral, a direct competitor of Chemetall.

64. Defendants' theft and unauthorized use of Chemetall's trade secrets, which were obtained by LaFlamme through improper means, constitute misappropriation of trade secrets.

65. As a result of this breach, Plaintiff has suffered and continues to suffer damages and irreparable harm, including, but not limited to, the loss of business, loss of goodwill, and other damages for which there is no adequate remedy at law, in an amount exceeding $75,000.

WHEREFORE, Plaintiff CHEMETALL US, INC., demandsjudgment in its favor and against Defendants DONALD LAFLAMME and CORAL CHEMICAL COMPANY as follows:

(a) Granting a permanent injunction:

1. Restraining and enjoining LaFlamme from, for a period of one (1) year from the date of his termination from Chemetall, engaging or participating in any employment or activity intended to or which does compete with Chemetall, either directly or indirectly, within any territory to which LaFlamme was assigned by Chemetall during the two (2) years prior to the termination of LaFlamme's employment with Chemetall;

2. Restraining and enjoining LaFlamme, for a period of one (1) year from the date of his termination from Chemetall, from, either directly or indirectly, soliciting or attempting to solicit, or assisting another to solicit any customers of Chemetall who purchased any Chemetall product within the two (2) years preceding his termination, or any prospective customers with which Chemetall identified or contacted within the two (2) years preceding his termination, or in any other way, attempting to influence the customers of Chemetall to alter or terminate their business relationships with Chemetall;

3. Restraining and enjoining LaFlamme, for a period of one (1) year following his termination of employment with Chemetall, from directly or indirectly, inducing or influencing, or attempting to induce or influence, any person engaged as an Employee, independent contractor or agent of Chemetall to terminate his/her relationship with Chemetall; or to canvas, solicit, accept the employment of, or otherwise engage or use the services of any person engaged as an employee, independent contractor, or agent of Chemetall;

4. Restraining and enjoining LaFlamme from disclosing any confidential information, as defined by the Agreement, to any third party; and

5. Restraining and enjoining Coral from aiding, abetting, or assisting LaFlamme from engaging in any activity which violates the contractual obligations set forth above.

(b) Awarding compensatory damages to Chemetall in an amount which exceeds $75,000;

(c) Awarding punitive damages to Chemetall in an amount up to twice its actual damages;

(d) Awarding interest to Chemetall;

(e) Awarding attorneys' fees and costs to Chemetall; and

(f) Awarding such other and further relief as this Court may deem just and appropriate.

DATED: Parsippany, New Jersey
February 15, 2016

Respectfully submitted,

KELLEY DRYE & WARREN LLP

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